

FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SO. DIST. GA.
S. B. DIV.

UNITED STATES DISTRICT COURT -7 PM 4:26

SOUTHERN DISTRICT OF GEORGIA

STATESBORO DIVISION

RICKY LAMAR HOGAN,)
Petitioner,)
v.) Case No. CV607-004
HUGH SMITH, Warden, and STATE)
OF GEORGIA,)
Respondents.)

REPORT AND RECOMMENDATION

Petitioner, a state prisoner confined in the Georgia State Prison, in Reidsville, Georgia, seeks to file *in forma pauperis* an "Emergency Petition for Extraordinary Writ of Mandamus" pursuant to 28 U.S.C. § 1651. Doc.

1. As petitioner is indigent, his request for leave to proceed *in forma pauperis* is **GRANTED**.

Petitioner claims that he is the victim of an "active continuing RICO conspiracy" and an "unconstitutional human rights conspiracy" arising from the alleged implantation of electronic monitoring devices into his body

by the State of Georgia and its officials. Doc. 1. Petitioner asks the Court to compel the respondents to “immediately release and physically discharge” him from custody. Id.

The federal *in forma pauperis* statute allows a court to dismiss an indigent’s action if the court determines that the action “is frivolous or malicious.” 28 U.S.C. § 1915(e)(2)(B)(i). This statute empowers the federal courts not only to dismiss claims resting upon ““an indisputably meritless legal theory”” but also to ““dismiss those claims whose factual contentions are clearly baseless.”” Denton v. Hernandez, 504 U.S. 25, 32 (1992)(quoting Neitzke v. Williams, 490 U.S. 319, 327 (1989)). Factually frivolous claims include those that describe ““fantastic or delusional scenarios, claims with which federal district judges are all too familiar.”” Id. (quoting Neitzke, 490 U.S. at 328).

In this case petitioner alleges that respondents have implanted in his body “several experimental high tech electronically-controlled, newly developed and secretive created mini-micro-type (humanly incerted spy/monitoring devices)” [sic]. Doc 1, at 6. Such factual allegations are not merely improbable but instead “rise to the level of the irrational or the

wholly incredible." Denton, 504 U.S. at 33.¹ Accordingly, this complaint, which was commenced without payment of the filing fee, should be dismissed as frivolous under § 1915(e)(2).

SO REPORTED AND RECOMMENDED this 7th day of February, 2007.



UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA

¹ In Denton, a state prisoner filed 5 civil rights suits claiming that he had been "drugged and homosexually raped a total of 28 times by inmates and prison officials at different institutions." 504 U.S. at 28. The prisoner did not claim any direct recollection of the incidents but based his belief that he had been drugged and raped upon needle marks found on his body and stains found on his clothes. Id.